

HV
N541w
1854

NEW YORK STATE LEGISLATURE
REPORTS





*New York State Library, Albany, N.Y. - Gift of the
New York State Library, Albany, N.Y. - Gift of the*
State of New-York.

No. 20.

IN ASSEMBLY, JAN. 25, 1854.

REPORTS

Of the majority and of the minority of the select committee on so much of the Governor's Message as relates to intemperance, and the sale of intoxicating drinks.

Mr. C. C. Leigh, from the majority of the committee, respectfully

REPORTS:

That they concur with the Governor in his message, that the Constitution invests the Legislature with the power, and imposes upon them the duty of adopting measures to promote education, to restrain vice, to punish crime, to protect the rights of persons and property, and to advance the welfare of this great commonwealth, composed of more than three millions of citizens. They concur with his Excellency in the remark, that intemperance is justly regarded as a fruitful source of misery, destitution and crime, and its effects are forced in a painful manner upon the attention of those who are required to execute the laws; and that in legislating upon the subject, care should be taken not to conflict with well settled principles of legislation, or with the rights of our citizens.

The committee have felt deeply impressed with the weight of responsibility resting upon them, and after a careful examination of the whole subject, are clearly of the opinion that the sale of

[Assembly, No. 20.] 1 [u.n.&4000,50p.]

intoxicating drinks as a beverage, retards education, encourages vice ; that it tramples upon the rights of persons and property to a criminal extent, and that it is the duty of this Legislature to pass a prohibitory law as the only means left to remove the evils complained of.

Your committee are of opinion that the sale of intoxicating drinks as a beverage, is the direct cause of more *pauperism, crime, debauchery, and frightful casualties*, than all other things put together.

Your committee are of opinion, that such liquor is a poison, and should be so declared and treated, producing a species of insanity which deadens the moral powers, and inflaming the passions, causing the unprovoked commission of crimes on the innocent and unoffending, of an enormity unparalleled in the civilized world ; crimes, that even barbarians would shudder at, and humanity in its worst forms could not commit, unaided by the demon that is ever present in the drunkard's cup.

Your committee are of opinion that this poison causes a reckless disregard of property in those who use it ; that it is the agent in the destruction of more property by fire, shipwrecks, railroad disasters and bankruptcy, than all other agencies put together.

That it impairs the health and shortens the lives of those who are seduced by the liquor traffic, is a fact sustained by such official records that none can deny ; it, thereby depriving the State of the labor of her citizen ; the child of its parent ; the wife of her husband ; leaving sorrow stricken widows, disconsolate mothers and helpless children, to an unfeeling world, and those temptations that make criminals of the drunkard's sons, and prostitutes of his daughters.

This bill proposes to save from thirty to fifty thousand drunkards now in our State, their wives and children from the awful fate to which the liquor trade has doomed them, and to break the charm by removing the temptation from thirty to fifty thousand

more of our fellow citizens, who are moving on surely to fill the drunkard's rank, many of whom are most earnest in their calls upon this Legislature, to stop a traffic cursed of God and all good men.

Pass this law and your committee are of the opinion that it will put an end to three-fourths of all the crimes against persons and property now committed. The testimony of the wardens of our prisons uniformly is, that at least nine tenths of the criminals confined, are brought there on account of the use of intoxicating drinks.

Your committee do not propose to recommend further taxes upon the good people of this State in enlarging and multiplying their prisons, erecting gibbets, and inventing new forms of torture to deter the wretched victims of alcohol from the commission of crimes, but by a simple and easy process relieve the State of heavy taxes, and save society from crimes by prohibiting the sale of this poison as a beverage. Neither is this bill submitted by your committee a sumptuary one. It does not proscribe the drink of any, it merely prohibits the sale of that as a beverage which is wholly noxious, and in this respect conforms with the spirit of the law which forbids the sale of unhealthy food.

The objection that other rights are invaded by this law we submit, is not true, for no man has a right to inflict on the community the evils with which this traffic curses society. The sanctity of every man's dwelling is secured to him; he is there left to the indulgence of his cup, not because it is right, but because no law but the moral law can reach him.

Your committee admit that the State should protect all valuable and innoxious property; but her best property is in the muscle and intelligence of a virtuous people. The State had a property in the minds of Fulton and Clinton; it is to such property the State owes its prosperity, and it is of more value than all the gold of California. This invaluable property, this mind and muscle, is daily, yea, hourly rendered useless or destroyed by

something styled property, which we are called upon by certain persons to protect, and which is less worthy of protection than the murderers it makes.

The objectors to a prohibitory law, think it a lawless act to knock in the head of a whiskey or beer barrel; but what is the value of such property when compared with the multitudes of human beings that are destroyed by the traffic in intoxicating drinks; better destroy the poison than let it destroy the grandest intellects in our land. Men of genius, talent, energy, enterprise and moral worth, now laid waste by this desolating scourge.

Your committee would call the attention of the Legislature to the healthy operation of a prohibitory law in the States where it has been enacted, diminishing greatly drunkenness, pauperism and crime; gaols and poor-houses are to let, and the peace and good order of the community are greatly promoted.

For several years the people of this State have petitioned for a prohibitory law; they have recently spoken through the ballot box, and your committee believe they will continue thus to speak until a prohibitory law, meeting and remedying the evils complained of, is promptly passed and fairly tried.

We therefore respectfully present the following bill, and recommend its passage.

CHS. C. LEIGH,
LEVI HARRIS,
J. MITCHELL,
LEMAN GIBBS,
B. HALL.

REPORT

Of the minority of the select committee on so much of the Governor's Message as relates to the subject of intemperance.

Mr. Wm. Dewey, from the minority of the select committee on so much of the Governor's Message as relates to intemperance, in the use of intoxicating drinks,

REPORTS:

That they entirely concur with their associates in their views of the enormity of the evils of intoxication, the fatal consequences to the minds and bodies of those who indulge to excess in the use of inebriating beverages, and the great wrongs and irreparable injury they inflict upon the friends that Providence may have entrusted to their guardianship.

These evils are so frequent and notorious that, without any highly colored descriptions, we leave them to the intelligence of the House. . But the conclusions which the majority of the committee seem to have drawn from these admitted facts, are not, in the estimation of the undersigned, either legitimate or reasonable. It by no means follows that even a great evil is to be abated by improper or unwarrantable laws. The wickedness of the offender is not the measure of the wisdom of a legislator. Extremes will not correct extremes, but will rather aggravate them. The whole history of legislation shows, that excessive severity defeats its own purpose.

The undersigned will not now discuss the question, whether a man can be made moral, charitable, temperate, or honest by law. They suppose this to have been decided long since. But they will endeavor to state fairly and faithfully, what they suppose to be the true question in issue, and the principles by which they think it should be determined.

The use of an exhilarating beverage is not regarded, we believe by the most intemperate advocate of temperance, as wrong in itself, or as injurious to society. It is the abuse of such a beverage, in the shape of intoxication, that is the subject of complaint; and the proposed remedy is, to deprive our fellow citizens of every

opportunity for the innocent use of an article so liable to abuse. This remedy proceeds on the principle that the freemen of this State, capable to exercise the highest attributes of sovereignty, individually, capable of managing their own affairs and of discharging the most important trusts, are, as a body, nevertheless so incapable of regulating their appetites, that they must be deprived by their own servants of any opportunity of ever exercising that noble faculty of reason, with which their Creator has endowed them, in respect to their drinks.

Even the temptations to which Providence subjects them, must be withdrawn by human laws, and they must be dealt with as children, or as imbeciles, and the instruments of mischief must be put out of their reach. We are sure that we do not exaggerate or mistake the fundamental principle upon which the majority of the committee proceed.

The question then is, Can this be done? Again: Ought it to be attempted?

The undersigned are of opinion that it can not be done, and that it ought not to be attempted.

In the first place, we deny wholly the legitimate power of any government thus to control its subjects. The powers and duties of government, seem to us, to have been lost sight of, or to be entirely misunderstood by the advocates of such a system. Governments are instituted for precise and definite purposes,—for the protection of the persons, properties and rights of the governed as individuals, and their integrity as an organized State.

In the infancy of society, or in ignorant and debased nations, governments have been permitted to usurp powers, which belong not to human tribunals. They have established religions, and a class to administer and to enforce them; they have created nobilities with special rights and privileges; they have interposed obstacles to knowledge and education, and practised thousands of similar enormities, supposed at the time to be useful or necessary to maintain their own existence. The oppressions, cruelties and frauds of the governments of Europe were all the consequences of a departure from their legitimate functions.

The duties of man to his Maker and to himself, are the subjects

of divine, not of human laws; and that combination of mortals that presumes to prescribe or to enforce them, usurps the attributes of Deity. These are principles above and beyond all human constitutions and laws, because they are founded upon the very nature of imperfect man. The faculties which are indispensable to the right exercise of such powers, are not possessed by him. That man shall not abuse his body or his mind by excesses, is a law of nature and of morals, for the violation of which he is responsible to other than human tribunals.

Providence, for its own wise purposes, has given to man the power of committing such excesses, with a conscience to restrain him; but the transient worms of the dust that creep on this earth assume to deprive him of this power.

This assumption exhibited itself primarily in New England, at the settlement of its first colonists. Their ideas of civil government were derived mainly from the theocracy of the Old Testament, mingled with some of the strange delusions that prevailed in the country from which they emigrated, and particularly among the religious fanatics with whom they were more or less connected. The ministers of their churches took an active, and indeed an overpowering part, in their councils. Their laws were passed after the model of those given to the Jews by Moses. The courts were governed by the principles of that code, and the most extraordinary restrictions on the freedom of individual action, and observances of religious duties and forms and moral obligations, were imposed by law. They have ever been regarded as excrescences and anomalies in the jurisprudence of the world. They furnish incontestable evidence of the utter ignorance of those who made them of the inherent limitations upon human governments, or of a determination to disregard them.

They passed laws that no persons should be admitted to the freedom of the body politic but such as were members of some of the churches within its limits. They settled the price of the labor of mechanics, and provided that no person whose visible estate did not exceed £200, should wear any gold or silver lace, or any gold or silver buttons, or any bond lace above two shillings per yard, or silk hoods or scarfs, under the penalty of ten shillings for every such offence. The law authorised the selectmen of the town to take notice of the apparel of any of the inhabitants, and

to assess such persons as they should judge to exceed their rank or abilities in the costliness or fashion of their apparel in any respect, especially in the wearing of ribbons and great boots, at £200 estates. . An exception, however, was made in favor of public officers and their families, and of those whose "education and employment have been above the ordinary degree, or whose estates *have been* considerable, though now decayed."

These laws were passed by the General Court of Massachusetts. Their kindred to the Maine liquor law cannot be mistaken. That law, the principles of which are now sought to be introduced into this State, is the legitimate offspring of the same principles. Time, cultivation, commerce, and more extended intercourse with their fellow-men, have indeed repealed or modified those laws, but the spirit which dictated them, the hereditary idea of a theocratic government, have survived to this day among the descendants of the Puritans. They have from time to time exhibited themselves in various extreme and fanatical propositions, and at last in this liquor law.

We intend not to depreciate in the least the many noble virtues or the heroic sacrifices of the Puritans, but we must not close our eyes upon the fact that they too had their faults, and indulged the errors of their age and of their peculiar class; that they forgot the very principles for which they made such sacrifices, and in their turn became intolerant persecuting bigots.

Our object in tracing the origin of the measures now under consideration, has been to show that they are not the emanations of enlightened patriotism or of republican sentiments.

A remarkable instance of the same spirit was exhibited a quarter of a century back in the excitement and agitation which then prevailed against running the mails and opening the post offices on Sunday.

These commenced, also, in New-England; and the people of that region succeeded in producing a public excitement among themselves, and among the more northern States, of equal, if not greater intensity, than that which has for some time demanded the total prohibition of the sale and use of intoxicating beverages.

Petitions poured in upon Congress to an unprecedented extent, for the prohibition of Sunday mails. The cause of religion, and of public and private morals, was represented to be endangered by such a desecration of a holy day, and the evil consequences which were to overwhelm the community, were dwelt on, and exhibited by orators and poets, in pulpits and lecture rooms, in the newspapers and in pamphlets, in colors not less brilliant than those which have been presented to us within a few years past, on the subject of total abstinence. The clamor and the violence against Sunday mails, were met by a calm, decided and able exposition of the fallacy on which the applicants founded their demand for legislative interposition, contained in a report that immortalized its author, and received the almost universal approbation of the reflecting and intelligent part of the American people. It silenced, if it did not satisfy even the enthusiasts who had worked themselves up to such intensity of fervor. The principles set forth in that report, and which produced such a result, are the same with those which the undersigned are endeavoring to present.

It was shown that government had no authority to pass the law required by the petitioners; not because full and absolute authority over post offices and post roads was not vested in Congress, but because it would violate the fundamental principles of all free governments. The application assumed, it is said, that Congress had a controlling power over the consciences of others. "In our individual character," it said "we all entertain opinions and pursue a corresponding practice on the subject of religion." This remark is equally true, of our duties and obligations in relation to food, drink, and clothing.

"However diversified these may be," says the report, "we all harmonize as citizens, while each is willing that the others shall enjoy the same liberty which he claims for himself. But in our representative character, our individual character is lost." The individual acts for himself, the representative for his constituent. He is chosen to represent their *political*, not their religious nor their moral views, to guard the rights of man, not to restrict the rights of conscience.

The report concludes with the pointed query : "Would it not be more congenial to the precepts of christians, to appeal exclusively to the Great Law Giver of the Universe, to aid them in making men better by purifying their hearts? Government will protect them in their efforts. When they shall have instructed the public mind, and awakened the consciences of individuals, the evil of which they complain will cease of itself, without any exercise of the strong arm of civil power. When man undertakes to be God's avenger, he becomes a demon; he loses every gentle feeling, forgets the most sound principles of his creed, and becomes ferocious and unrelenting."

This report produced the happiest effects; and now we see that under its wise counsels the public sentiment has gradually and peacefully produced, to a great extent, the very results aimed at by the petitioners.

Every part of this reasoning is applicable to the question before us; for we maintain that the right of every individual of mature age and sound mind to determine for himself what shall be his diet, how much and what kind of clothing he shall wear, what beverage is adapted to his constitution or required by his state of health, and in what quantities, is as sacred as his right to embrace any religious creed that his judgment approves. They are in both and in all these cases rights of conscience, rights of private judgment, and the government that invades either is in essence a despotism, whatever may be its form: We know by sad experience that majorities in republics may be as despotic as any monarchy.

The same principle which justifies a government in prescribing the food, the drinks, the refreshments, or the clothing of its subjects, would equally justify it in prescribing a creed which the majority might deem essential to the general welfare. Public and private amusements would fall within the same anathema. Dancing has in former times been prohibited. Mesmerism, clairvoyance, spirit-rappings and table turnings, whether pursued as recreations, or as serious occupations, are far more obnoxious to sound principles of civil government than the quality or quantity of a man's drink, because they are more dangerous to the peace of society, and more

convenient instruments of fraud and imposition. Yet, what sane man would recommend their prohibition by law?

Opium eating is a means of intoxication that is becoming quite prevalent among us, particularly with those whose love of excitement can no longer find gratification in the use of wines or alcohol which they have renounced. Many of this class notoriously find solace in opium; and it is far from being improbable, that if all exhilarating and exciting beverages are prohibited, the use of opium will become extensive. Then, upon the principle assumed by the majority, its use must be prohibited.

In our view all these are cases for individual judgment and personal responsibility to the Great Giver of our lives. It is not within the competency of human tribunals to examine into and decide them.

It is not indicative of that manly frankness which should characterise such a discussion, that, in the report of the majority of the committee it is denied that their proposed bill is a sumptuary law, because they do not in terms prohibit the citizen from drinking alcohol or wine, but only prohibit its being sold or given to him! No argument can be necessary to show the futility of this distinction, between doing a thing directly, and doing it indirectly. When a man is deprived of the opportunity of obtaining any article, by legal penalties, he is effectually prohibited from obtaining or using it at all. We are unable to understand why the majority should shrink from an open avowal of that which it is impossible to conceal, their design absolutely to *prohibit* the sale and use of any beverage that may in any event intoxicate. The phrase, "*sumptuary*," odious as it is, is odious only on account of the principle it embodies; that of wanton restriction of personal liberty. The objection to the principle cannot be obviated by a denial of the name.

Our first reason therefore for denying that individual liberty can be thus restricted, and individual judgment and responsibility can be thus trammelled and controlled, is that it is a subject beyond the cognizance of governments, because it is beyond their capacity and competency, and because the attempt to exercise

power over it, breaks down the great land-marks that hedge in and limit despotic power.

Our second reason for maintaining that absolute prohibition of the sale or use of beverages that may intoxicate, cannot be effected by the bill reported by the majority of the committee, is that the provisions of the bill are in many respects palpable violations of the Constitution of the United States, and of great elementary principles of the common law, and of universal jurisprudence.

The framers of the proposed law seem to have been aware that, as the Constitution of the United States gives to Congress the exclusive power of regulating commerce with foreign nations, and that, as the act passed by Congress allows the importation of foreign liquors, and by necessary implication, allows the sale of such imported liquors, in their original vessels, state legislation could not impede or prevent such sale. The decision of the Supreme Court of the United States, in 12th Wheaton's Reports, that a state law, which, in its effect and operation, impeded the sale of an imported article, was a violation of the Constitution, and was void, was too plain and direct to be met in its face. A resort, therefore, is had in the proposed bill of the majority, to a shuffling contrivance to evade the objection. The functions of judge and jury are invaded, and it is declared that the evidence of the identity of the liquor imported in its original vessel, provided by the ordinary law, shall not be deemed sufficient. In thus seeking to avoid one difficulty, the framers of the bill have encountered another still more formidable. It is the office of the law to declare what is *competent* evidence, but not what shall be sufficient to satisfy the conscience of a jury. If such contrivances were allowable, any law of the United States may be nullified, by requiring proof of the facts of such a description as could not be given; as for instance, that the testimony of the collector of the port only should be sufficient evidence of the importation of goods.

Perhaps one of the most hateful features of the proposed bill, is that contained in the 9th section, which requires a magistrate to issue a warrant to search the dwelling house of any citizen, upon the oath of any three persons, "that they have reason to believe and do believe that intoxicating liquors are kept there-

in for sale." No fact is required to be stated, but simply a belief, and that they have reason to believe, upon which it would be impossible to assign perjury. And upon such an oath of any three malicious enemies, the domicile of every citizen may be invaded; his rooms, his closets, pantries, cellars, trunks, bureaus, and every other place, ransacked by one of the very informers who believes or pretends to believe as required by law. The old Saxon maxim that every man's house is his castle, into which no one can enter without his permission, except to arrest on a charge of felony, or search for stolen goods, this venerated maxim, the shield and protection of our freedom and our homes, is to be obliterated, and the quiet of every private family in the State is to be disturbed by any three reckless or mischievous rascals or fawning sycophants at their pleasure.

Lord Camden and the whole court held that a warrant to search for a seditious libel, issued by the Secretary of State, was illegal and void; that the only case in which the law permitted a search of a house was for stolen goods; to warrant which there must be a full charge upon oath of a theft committed. The owner must identify the place where they are lodged; he must attend the execution of the warrant, and he must abide the event at his peril, for if the goods are not found he is a trespasser. Such is the only search warrant known to the law of the land, and such are the safeguards placed around it to prevent its abuse. So sacred is this immunity of a domicile regarded, that the fourth article of the amendments to the Constitution of the United States was adopted for the express purpose of protecting it from violation. This great bulwark of personal liberty is broken down by the bill of the majority of the committee, in respect to every house in part of which a shop is kept; no single fact is required to be proved; no probable cause to be shown to any magistrate to justify the invasion of domestic privacy. Thus the house of an American citizen will cease to be his castle, if the bill become a law, and be held valid; of which the undersigned entertain great doubts.

All liquor, owned by any person arrested and convicted for selling or keeping for sale, wherever the same may be, if three hundred miles distant, is declared forfeited.

Juries are to be packed from those citizens only who do not sell or keep liquor for sale. Any wife may maintain an action to recover back money paid by her husband for liquor, and any child may maintain such action for money so paid by his father; and they may bring actions for selling liquor to the husband or father, without alleging or proving any damages; and husbands and wives are made witnesses for each other. Proof of the keeping of liquor is declared sufficient to sustain an averment of unlawful keeping—that is keeping for sale; and without a particle of evidence of guilt, the burthen of proving innocence is thus thrown upon the accused, who can do so only by proving a negative!

Such are some of the monstrous violations of great principles of law, that have been established for centuries, for the protection of the subject from unjust accusation, which distinguish this extraordinary bill.

The clearest and most cherished rights of freemen are subverted, and a code of proceedings, which has no precedent, except in despotic governments maintained by military force, is substituted for them in this land of liberty and in the nineteenth century.

We say emphatically and unequivocally, such a law never can be enacted. It will be abhorrent to every man who knows what civil liberty means.

And this is our third reason for maintaining that the avowed object of the majority of the committee cannot be attained by law. We are bound to consider such tyrannical and unexampled provisions necessary to carry into effect the main purpose; and nothing could more effectually condemn the purpose, than the fact that it can be accomplished in no other way than by the violation of private right, by prostrating the rules and maxims which have hitherto governed the administration of justice; by introducing an army of spies and informers, and by breaking up the domestic relations of husband and wife, of father and child.

If, with so many willing prosecutors and ready witnesses as the legions of total abstinence must contain, our present laws to restrain and regulate the sale of intoxicating liquors cannot be

enforced, what reason is there for expecting that such a barbarous code as that we have depicted will be any better executed! So far from being carried into effect, we hazard nothing in predicting that, after litigation and prosecutions without number, after the most bitter animosities are engendered, after riots and bloodshed shall have terrified our cities, there will come a revulsion in the public mind ten thousand times more potent than the present ephemeral frenzy, that will scatter all your enactments to the winds of heaven, and leave a frightful condition of public sentiment, hostile to any efforts to mitigate the evils of intoxication.

The best and most reliable information assures us, that in Massachusetts, Maine, and Rhode Island, where a similar statute exists, intoxicating liquor can be obtained, and is constantly obtained, by those who can afford to pay for it, as freely and as extensively as at any time previous to the enactment of the statute.

There is an essential difference in the character of the people of New-York, and that of the people of the States mentioned. There will be found in the State much less disposition to evade, dodge, and twist around the law. Our people will meet it openly and boldly, and defy its execution. We recommend no such course. We deprecate it most sincerely; but to our minds, it is not the less certain. In your cities you will not have prosecuting officers enough to hear and try them, nor prisons enough to contain the defendants, if they shall be convicted. If these should not be the results, it will be owing to another cause. Notwithstanding your provisions to pack juries, notwithstanding your unconstitutional directions respecting the sufficiency of evidence and presumptions of guilt without evidence, you will not convict. Juries will laugh to scorn your arbitrary and tyrannical enactments, and the majesty of the law will be trampled in the dust.

There is one feature in the bill which will be found to be its death-wound, and which we regard as equally unsound in principle, hostile to the innocent comforts and enjoyments of the people, and destructive of the objects of legitimate and rational

temperance. By the 39th section, every provision of the bill is made applicable to, and includes "all alcoholic, vinous, malt, and fermented liquors," and all mixed liquors composed of parts of these.

Hence not only porter, ale, beer, and cider, but the lightest wines imported, as well as those made in the family from currants, elderberries, gooseberries, and any other fruits, and home-brewed drinks, such as mead and metheglin, root-beer and soda compositions, are denounced and punished. These are all fermented liquors. Of many of them, it is not true that they can produce intoxication if taken in any quantity. Can any man who stops to reflect a moment, believe that a law which prohibits the sale or the giving away of these drinks, will be obeyed by a people habituated to their use?

Will social gatherings provide only cold water for their refreshment? Will marriages be celebrated, and fourths of July commemorated, on cold water? The annals of legislation, either in monarchies, aristocracies, or republics, or even in the model code of Moses, furnish no instance of such detestable interference with the enjoyments of life. The bounties of Providence are to be spurned, the sanctions of the founder of christianity are to be contemned, the practices and the teachings of his apostles are to be repudiated, to gratify a monomania that has seized some of our enthusiasts.

Nothing is better calculated to defeat the the very professed objects of its advocates: the prevention of intoxication. Man is endowed by his Creator with instincts, desires and tastes, for his gratification. The flowers of the field and the lilies of the valley, are adapted to our senses, for our pleasure. Products of nature and of art, in infinite variety and extent, are given for the same purpose. Exhilarating and refreshing drinks are as indispensable to our happiness as varieties of food. By the law of his nature man is entitled to their enjoyment. As a member of civilized society, his wants increase with his refinement. No human law can overcome this natural law, or extinguish his taste or his appetite. He will indulge, among other things, in exhilarating drinks. Cut him off from those that are the most innoxious in

their nature and tendency, and he is compelled to resort to the most noxious and dangerous. No honest and intelligent traveler, who has visited the parts of Europe where light wines are produced and used, has spoken on the subject without bearing testimony to the fact that in those countries intoxication is scarcely known. Every writer attributes this freedom from intoxication to the prevalent use of these light wines. If the experience of the world is worth anything against the ravings of enthusiasm, then the very best known mode of producing a temperate people, is by encouraging to the utmost extent the introduction into general use of light exhilarating and harmless drinks; and we confess, for ourselves, we look for more actual and real reform by the culture of the grape in our own country, than from any other cause. In this respect the proposed bill is inconsistent with itself. It allows the sale of all kinds of liquor for "medicinal purposes." What is a medicinal purpose? Does it not mean any use of liquor to promote health? And are not cheerful spirits promotive of health? What then is to prevent liquor from being sold for that purpose? Or is the provision a trap, and is this general purpose limited by the provision that it is not to be sold unless *the seller* "shall have good reason to believe, and does believe, that the same is intended to be used by the purchaser in some other way than as a beverage." Suppose a learned justice of the peace called upon in the trial of a complaint against the seller, to expound this provision. By the 32d section the fact of selling, alone, is sufficient evidence of an unlawful sale. That fact being proved, the defendant is called upon for his defence. How is he to show that he had good reason for believing it was not to be used as a beverage? Observe, the party purchasing, and about to use it, is supposed by the whole law, and especially by this provision, to be incapable of determining for himself whether he needs the liquor for any good cause other than as a beverage, but the seller must judge for him, and must have good reasons for his judgment, on pain of fine and imprisonment. Suppose this difficulty overcome, the justice will be desirous of knowing what is meant by the language "is intended by the purchaser to be used in some other way than as a beverage,"

and he will naturally inquire, how can the liquor be used other wise than as a drink, except as an outward application?

Beverage means nothing more or less than a drink; and until the authors of the Maine Liquor law shall also make by law, a new dictionary of our language, this must continue to be its meaning. The result is, that the seller must be convicted, even if he sold for "medicinal purposes" liquor to be drunk. This probably was not the intent of the framers of the bill, but it is a consequence not only of the inaccurate use of words, but of the impracticability of their scheme; which does not admit of precise and definite language.

Indeed, we regard this voluminous bill, so defective in form, arrangement and language, so cumbrous and inartificial, that it will be prolific of litigation before its legal meaning is settled; and in the mean time the magistrates acting under it, will find themselves environed with difficulties and responsibilities.

We have now given our reasons for maintaining that the object of the bill reported by the majority of the committee, that of depriving the citizens of the State of the opportunity of drinking alcoholic or vinous liquor, by prohibiting its sale, can not be attained; because the purpose is one beyond the cognizance of human governments—that all provisions for attaining it must be violations of the essential principles of civil liberty and personal freedom and responsibility, and that those proposed by the bill are eminently tyrannical and despotic, and can not be enforced.

If we have succeeded in establishing these positions, then a sufficient reason is already given, why such a measure should not be attempted. But there is another general reason against the attempt to which we attach great weight. In this country no law can be enacted which is not in full accordance with the general public sentiment, as to its utility and the wisdom and justice of its provisions. In that region where a similar statute has been enacted, and where there are more outward professions of respect and obedience to the laws, where there are many reasons why a law should be better enforced than in this State; in that region the statute is inoperative generally, and particularly on the wealthy classes.

These can obtain liquor of any kind with as much ease as at

any previous time. It doubtless operates on the poor with great severity. Such is undeniably its practical operation.

The undersigned think that such a practical discrimination is very unfortunate. It will add new motives to disobedience and defiance of the statute, if it should be passed. But independent of that consideration, we apprehend the most pernicious consequences from teaching the people practically that they may disregard any law, constitutionally enacted, with impunity. Undue reverence for government, law and order, is not the vice of our time.

No one subject could be named more likely to inflame resentment against them, than that under consideration, and such a statute as that proposed. The general effect would be to produce such a laxity of public morals that we could not be sure of enforcing any law.

All wise legislators have consulted the public sentiment. Tornadoes and whirlwinds are not reliable indications of the true direction of the wind; nor are impulsive enactments good evidence of that sound, sober second thought, which only can sustain any law. We have had hurricanes that have swept over our religious fields and left devastation in their rear. Revulsion is the inevitable consequence of excess in the moral as in the religious world; and more injury may be done to genuine reform in respect to temperance by extreme measures, for which the public are unprepared, than by any want of legislation.

We believe there is an entirely mistaken view, expressed in the report of the majority, in reference to the state of public sentiment on the subject of prohibitory laws against the sale of liquors and wine. Three millions of people are not represented by a few hundred noisy declaimers.

While a subject is under discussion, the mass look on, and let it take its way. The tried, the ambitious, and the lovers of notoriety, yield to the first boisterous outbreak of enthusiastic feeling on any subject, particularly one of moral reform. These swell the ranks of the invaders, and thus a victory is supposed to have been obtained.

But in reality this is the mere surface of the matter. The masses are waiting to see what definite shape the new project will take, and when it is brought home to their firesides and their personal enjoyments, they will then awaken to the reality of what they supposed to be the day-dreams of enthusiasts. This is the history of all such excitements, of which we have given an example in respect to the Sunday mail law. We might show also how much ground has been lost to the cause of temperance, by abandoning the moderate and reasonable course of the early reformers, and by the extreme measures of coercion which have latterly been urged. But, were it otherwise, were the assumptions of the majority of the committee correct, that public opinion has already expressed itself in favor of the Maine Liquor Law, yet we have a duty to perform to our constituents and to our posterity, to make a faithful effort to bring back the intelligence of the community to a calm and deliberate consideration of the dangers of the proposed innovation.

We are well aware of the constant impeachment of motives, which is levelled at all those who dare question the infallibility of the leaders in this movement, and who choose to think for themselves. We disdain to retaliate by showing how wide is the gate, and broad is the road that leads those to destruction, who choose to fall in with an apparent throng. But we owe it to ourselves, and especially to those against whom the proposed law is directed, that we should not be misunderstood.

We pity the poor inebriate who has been brought by accident, untoward circumstances, or mental or moral debility to his degradation. We have no words to express our condemnation of those who have wilfully chosen the road to destruction. But, as legislators, we cannot consent to sacrifice those safeguards of liberty, which protect us and our families, even in the hope of saving the inebriate from himself. We have no sympathy with the sordid rum-seller, who tempts the weak to their ruin. But even to reach him, we may not immolate the right of the people.

We have much more hope for reformation in the use of intox-

icating liquors, by the cultivation of mind, by the dissemination of correct information and serious warnings, by the efforts of the good in the pulpit, in the lecture room, and in newspapers, by good example and kind advice, and above all, by sound moral and religious principles, than in any human laws. The public sentiment which withholds public confidence, or private respect, from the inebriate or his tempters, which refuses him office and station, and marks him as an object of loathing and disgust, will accomplish more in the way of reform, than all the penal enactments we can devise. If we did our duty in this respect, as individuals, and as members of our different parties and societies, there would be no occasion for any law.

In our judgment, extreme measures, of questionable validity, and violating all our habits, will accomplish nothing. But measures may be adopted, consistent with the principles of our free institutions, to restrain and mitigate the evils which society endures from this source.

We hold that, while every citizen of mature age and competent mind, has the inalienable right to determine for himself, and upon his responsibility to his Maker, how and in what quantity he will use the bounties of Providence, and that no human law can interfere with responsibility, yet that society has an equal right to prevent the consequences of his errors or his vices visiting the innocent, or burdening the community; and have a right also to remove temptation, as far as possible, and punish the tempters. While we would not prohibit we would regulate.

In accordance with these general principles, and the views which have been expressed in the course of this report, we propose the following resolution :

Resolved, That a select committee of members be appointed to prepare and bring in a bill to regulate the sale of liquor, embracing the following provisions :

1. A board of excise to consist of freeholders, to be elected every three years, by separate ballot in each town and

ward, with power to grant the licenses to sell liquor authorized by law, and whose special duty it shall be to prosecute for all violations of the act.

2. Two distinct kinds of licenses to be granted by them; to electors only; one to tavern-keepers for the sole and exclusive accommodation of travellers, to whom only liquor may be sold by the small quantity. Such sale never to be made to a resident or inhabitant of the city or town, nor to any one under 18 years of age, nor to any one then intoxicated, or who has already drank a quantity ordinarily sufficient to produce intoxication. Before receiving a license, to give sureties of at least three freeholders, for their faithful compliance with the law, and to pay all fines, and all damages that may be recovered, under the provisions of the act. Such licenses only to be granted to men of good character, and for so many taverns only as may be necessary for the accommodation of travellers. To receive compensation for their services, upon being allowed by the town or city auditors, upon their oath that they have, in no instance, knowingly granted a license to an improper person, or more than was necessary. To report to the town or city clerk the names of all persons licensed, with the names of their sureties, and to publish the same in newspapers, and to have power summarily to revoke licenses.

The second set of licenses to be granted to respectable persons, not exceeding one to every hundred inhabitants of the town or ward, to sell liquor and wines in quantities, of alcoholic liquors of not less than one gallon, and of wines not less than one quart; to be prohibited from permitting any liquors sold by them to be drank in or within twenty feet of their stores; and the like provision respecting sales to intoxicated persons as in the case of tavern-keepers: To give the like sureties with the like obligations. Nothing but liquors to be sold on the same premises, except drugs, medicines, spices, and such articles as the Board of Excise may specially allow, but meats, vegetables, or any other food never to be sold.

Licenses for taverns not to be less than \$100 in villages, with a population of 1,500, or under; \$200 in villages with a population of 5,000, and proportioning the license to the population in the village, town, or ward.

Licenses to sell liquor never to be granted to pedlars of meat, vegetables, or any other human food.

3. Wine, beer, cider, and all other drinks, except alcohol or distilled liquor, may be sold by any person.

4. Distillers of alcoholic liquors to be licensed, and to give sureties, as in the case of sellers, and to pay similar sums for licenses.

5. Penalties of fine and imprisonment for violations of the act, and for selling without license.

6. Boards of excise to hear summarily any complaint against persons licensed, and to revoke licenses.

7. To impose a large pecuniary penalty upon those persons, having any license under this act, who shall sell, give, or furnish, in any way, intoxicating drink to any one known to be addicted to intemperance or to any minor under eighteen years of age, in such quantity as may ordinarily produce intoxication, unless the same be furnished upon the written direction, signed by two reputable medical practitioners, duly licensed to practice, by some medical society, as being, in their judgment, indispensable as a medicine. Such directions to specify the quantity, and time or times, when such liquor may be so furnished.

The penalties to be sued for by certain public officers, in actions upon the bonds, given by any taverner or licensed vender, and against others individually; in all which actions bail shall be required, and judgments therein may be enforced by executions against the body; the amounts collected to be applied *first* to a liberal compensation to the prosecuting officer, and *secondly* to be retained as a trust fund.

8. To make it the duty of certain public officers to prosecute any person, whether licensed or otherwise, who shall furnish any intoxicating drink to any one known to be addicted to intemperance, and having a family, to recover any damages which the family of the party, to whom such drink shall have been furnished, or any member thereof, may sustain from the acts of such person when in a state of intoxication, or not possessing his

ordinary reason, when the jury shall be satisfied, by competent proof, that such intoxication or state of mind, was produced or continued by the use of the liquor, so furnished: and also to recover any damages which the family of any person, addicted to intemperance, or any member of it, may sustain in consequence of the neglect of such person to make suitable provision, according to his means, for the support and education of his family, or any member thereof, if such neglect shall appear to the jury, by competent proof, to have been caused or continued, in part or wholly, by the use of intoxicating drink, furnished by any person, whether a licensed taverner, or vender, or otherwise to any one known to be addicted to intemperance. -

The sums recovered in such actions, after making liberal compensation to the prosecuting officers, to constitute a trust fund for the families sustaining such damages.

9. The trust funds to be held by the county treasurer, or supervisor of the town, according to the amount, and to be applied to the relief of the family, for whose benefit the same were recovered, under the direction of the county judge, or any three justices, according to the amount. The trust fund arising from penalties, to be held by the supervisor of the town, and applied to the support of the families, who may be deserted or neglected by inebriates.

10. Adulteration of liquors by unwholesome materials to be an offence punishable by fine and imprisonment.

Believing that great good will result from the adoption of these provisions, they are respectfully submitted.

WM. DEWEY,
JACOB ODELL.

Albany, 25th January, 1854.

AN ACT

For the suppression of Intemperance.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Every person who shall sell or keep for sale, or with intent to sell, either personally or by his partner, clerk, agent or servant, directly or indirectly, under pretence of giving, or any other pretence whatever, intoxicating liquor of any kind or name except as hereinafter provided, shall, upon conviction, be adjudged guilty of a misdemeanor, and shall forfeit all liquors owned by him, and in addition shall be punished as follows :

For the first offence, by a fine of not less than fifteen dollars, nor more than one hundred dollars.

For the second and every subsequent offence, by a fine of not less than twenty-five dollars, nor more than three hundred dollars, and by imprisonment of not less than thirty days, nor more than six months.

Upon the conviction of any person authorised to sell as provided by the second section, of any such offence, he shall be punished by a fine of one hundred dollars, and shall forfeit all the liquors owned by him, and shall forever be disqualified from selling liquor within this State, and upon every subsequent conviction he shall be punished as for a second conviction.

Upon every conviction the defendant shall also be required to pay all costs, fees and expenses, including a counsel fee to the complainant, to be fixed by the court, not less than five nor more than ten dollars.

In default of payment of any such fine, costs, fees and expenses, or any part thereof, the defendant shall be committed until

the same are paid, not exceeding one day for each dollar of the amount unpaid.

§ 2. Every citizen of good moral character, who is an elector of the town or city in which he intends to sell intoxicating liquor as hereinafter provided, and who is not a pedler, nor the keeper of, or interested in any boarding or victualing house, provision or fruit store, or any bar-room, confectionery, inn, tavern, or other place of public entertainment, or keeper of, or interested in any museum, theatre, or other place of public amusement, may keep for sale, and may sell pure and unadulterated intoxicating liquor and alcohol, for mechanical, chemical, or medicinal purposes, and pure wine for sacramental use, provided he shall within one year previous, have filed in the office of the clerk of the town or city in which such liquor is to be sold, a declaration on oath or affirmation taken before said town clerk or clerk of the city, who is hereby authorised to take such oath or affirmation, setting forth the town or ward in which he intends to sell such liquor, and declaring that he is an elector of such town or ward, and does not use intoxicating liquors as a beverage, and is not, and during the time he shall sell such liquor, will not be a pedler, nor the keeper of, nor interested in any inn, tavern, boarding-house, victualing-house, provision-store, fruit-store, bar-room, confectionery, or other place of public entertainment, nor the keeper of or interested in any theatre, museum or other place of public amusement, and will not violate any of the provisions of this act.

§ 3. Any person authorised as in the last section provided, may sell pure intoxicating liquor for the purposes therein mentioned (but not to be used upon the premises where the same is sold), in the following cases and no other :

1. To any person of the age of twenty-one years, being of good character for sobriety, and an inhabitant of the town or ward in which such liquor is sold, or of an adjoining town or ward; in all cases in which the person selling the same, shall have good reason to believe, and shall believe, that the same is intended by the purchaser to be used in some other way than as a beverage,

and not to be sold, disposed of, or given away, or to be used on the premises; or,

2. To any person authorised to sell such liquors as in the last section provided.

§ 4. Courts of special sessions, as now constituted, shall have power to hear and determine charges for such offences, and to punish the persons convicted thereof, as provided in the first section of this act, and whenever any person charged with any such offence shall be brought before any magistrate authorised to hold such court, such magistrate shall not be required to take the examination of such person, but shall proceed to trial notwithstanding such person may not have requested to be tried by such court. At the time of joining issue, and not after, either party may demand that the same be tried by jury.

The complainant may appear upon such trial with or without counsel, and prosecute the complaint on behalf of the people. Every county judge and every police justice of any village or city is hereby authorised and required to hold a court of special sessions for the trial of such offences.

Upon a judgment of affirmance in the supreme court of a conviction had before any court of special sessions, costs shall be allowed, which may be received by the district attorney to his own use, and in default of payment thereof, the defendant shall be committed, to the same extent as provided in the first section.

§ 5. It shall be the duty of every supervisor and superintendent of the poor, and overseer of the poor, and it shall be the right of every other person, whenever he shall have any knowledge or information that any offence has been committed against any provision of this act, to make complaint or cause complaint to be made thereof, and to prosecute such complaint in the name of the people. In case any person other than such officer shall not make out a prima facie case upon the trial of such complaint, the court shall render judgment against such person for costs and issue execution thereon, in the same manner as in civil actions before justices of the peace.

§ 6. One or more such offences may be charged by the same complainant, in any complaint or warrant against the same person or persons, and shall be tried at the same time, and the person or persons charged shall be punished for each offence of which he or they shall be convicted as upon separate convictions, but such offences shall all be considered as of the same degree.

§ 7. A certificate under the hand of any magistrate, stating any such offence charged against any person, and the conviction and judgment thereon, shall be evidence in all courts and places of the facts stated therein. But no such certificate shall be entitled to be read in evidence in any other county than that in which such magistrate shall reside, unless there shall be subjoined thereto, a certificate under the hand and official seal of the clerk of the city or county where such magistrate resides, that such magistrate, at the time of such conviction, was duly qualified and acting as such magistrate, and that such clerk is well acquainted with the hand writing of such magistrate, and verily believes that the signature to such certificate of conviction is genuine.

§ 8. Every warrant issued by any magistrate for the apprehension of any person charged with the commission of any such offence, except warrants issued for the apprehension of persons authorised to sell as provided by the second section of this act, shall also contain a command to the officer to whom the same is directed, with proper assistance forthwith diligently to search the store, dwelling house and premises of the person or persons charged, and seize and safely keep all liquor found therein, with the vessels in which the same is contained. It shall be the duty of the officer to make such search and seizure notwithstanding he may not be able to find or arrest the person or persons charged. All liquor so seized, together with the vessels in which the same is found, shall be stored and kept in some safe and convenient place to be disposed of as hereinafter provided.

§ 9. Whenever complaint on oath or affirmation shall be made to any magistrate, by any three credible persons, residents of the town or city where the complaint is made, that they have reason

to believe and do believe that intoxicating liquors are kept or deposited, intended for sale by any person not authorised to sell the same, in any place whatsoever within said city or town, or upon any water adjacent thereto, or within five hundred yards of the boundaries thereof, it shall be the duty of such magistrate forthwith to issue a warrant commanding the officer to whom the same shall be directed, with proper assistance, forthwith diligently to search such place in the day time, and to seize all liquors found therein, together with the vessels within which the same are contained, and to store the same in some safe and convenient place, to be disposed of as hereinafter provided. But no warrant shall be issued under this or the preceding section, to search any dwelling house in which, or in part of which a shop is not kept, except upon proof that intoxicating liquor has been sold therein by the occupant thereof, or with his consent, within one month before the time of making such complaint, and is then kept therein intended for sale.

§ 10. It shall be the duty of every sheriff, under sheriff, deputy sheriff, constable, marshal or policeman, to arrest any person whom he shall see actually engaged in the commission of any such offence, and to seize all liquor exposed for sale, at the time and place of the commission of such offence, together with the vessels in which the same is contained, and forthwith to convey such person before any magistrate of the same city or town, and to store the liquor and vessels so seized in some safe and convenient place, to be disposed of as hereinafter provided.

§ 11. It shall be the duty of every sheriff, deputy sheriff, constable, policeman or marshal, if he shall suspect or have reason to suspect that any intoxicating liquors are kept, intended for sale, in any place of any kind for selling refreshments at or near the place of any exhibition, parade, or public occasion of any kind, to search such suspected place, and if any intoxicating liquors are found therein, to seize the same and arrest the keeper or keepers of such place, and all persons engaged therein, as clerks, servants or agents, and forthwith to store such liquors and take such person or persons before any magistrate having jurisdiction of such offence, to be dealt with according to law. It

shall be the duty of every officer by whom any arrest and seizure may be made, under this or the preceding section, to make complaint on oath against the person arrested, and to prosecute such complaint to judgment and execution.

§ 12. Whenever any liquor shall be seized under any provision of this act, it shall be the duty of the officer by whom such seizure is made (except in cases where the owner thereof shall have been arrested) forthwith to give written notice to the owner thereof of the seizure of such liquors, which shall be described in such notice as near as may be, and of the name of the magistrate by whom the warrant was issued, or (in case of seizure under either of the last two sections) before whom the person arrested was carried, and the name and residence of such officer making such seizure, and the time of such seizure. Such notice shall be served by delivering the same to the owner personally, or by leaving the same at his last or usual place of residence, with a person of mature age residing on the premises. If the owner be not known or can not be found and his place of residence be not known to the officer, such notice shall be served by delivering the same to any person of mature age, residing or being employed in the place in which such liquor was contained, or if none such be found, by posting the same in a conspicuous place upon the outside of such place, and copies of such notice, containing also a description of the place in which such liquor was found, shall forthwith be conspicuously posted in at least two public places within said city or town.

§ 13. All liquors seized under any provision of this act, except in cases where the owner thereof shall have been arrested shall be kept stored for two weeks after service and posting of notices as required by the last section, after which time, upon the proof of such service and posting by the return of the officer endorsed upon the warrant of search, or by other evidence to that effect, such liquors, together with the vessels in which the same were contained, shall be adjudged forfeited by the magistrate named in such notice, to whom such proof shall be made, unless they shall have been claimed as hereinafter provided. And all liquors which shall have been found in the possession of any per-

son who shall have been arrested for violating any provision of the first section, and seized and not claimed by any other person, and all liquor owned by such person, wheresoever the same may be, shall, upon the conviction of such person of such offence, be adjudged forfeited by the court before which such conviction is had.

§ 14. Any person may, at any time before forfeiture, present to the magistrate named in such notice, an affidavit or affirmation in writing, stating that such liquor at the time of such seizure, was actually owned by him, or by some other person named by him, for whom he is agent, that he or such person had not become possessed thereof for the purpose of preventing its forfeiture, and that the same had not been kept intended for sale, contrary to the provisions of this act, to the best of his knowledge and belief, and also specifying the purpose for which the same was kept; and thereupon it shall be the duty of such magistrate forthwith to appoint a time and place for the purpose of trying such claim, and to cause notice thereof to be given to the person or persons upon whose complaint the warrant of search was issued, or by whom such seizure was made. At the time and place appointed, such magistrate shall hold a court for the trial of such claim, and shall hear the proofs and allegations offered in support of and against the same, and unless the claimant shall show by positive proof to the satisfaction of the court or jury that such liquor is of foreign production and has been imported under the laws of the United States, and in accordance therewith, and is contained in the original packages in which the same was imported, and in quantities not less than the laws of the United States prescribe, and that the same was kept by him for lawful purposes, or that the same came lawfully into his possession and was kept by him for lawful purposes, the same shall be adjudged forfeited, and judgment shall be rendered against the claimant for the costs, and in default of payment thereof, execution shall be issued therefor, against his property and person. Upon the trial of such claim, if the claimant shall allege that the liquors seized have been regularly imported under the laws of the United States, and that they are contained in the original packages, the custom house certificates of importation and proofs of marks on the casks or packages corresponding thereto, shall not be received as sufficient evidence that the liquors

contained in said packages are those actually imported therein. The claimant may, at the time of making such claim, demand that the same be tried by a jury and thereupon the like proceedings shall be had in respect thereto, as are provided by law in relation to trials by jury before courts of special sessions. The court shall keep minutes of the proceedings, testimony and judgment upon such claim which shall be subscribed by the magistrate holding the court, The court shall have power to issue process to compel the attendance of witnesses, and to punish for non-attendance as witnesses or jurors, in the same manner as in civil actions before justices of the peace.

§ 15. Whenever judgment shall be rendered upon any such claim adversely to the claimant, he may, within four days thereafter, give written notice to the magistrate by whom such judgment was rendered, that he intends to appeal therefrom to the county judge of the county within which such claim was tried; but such notice shall be of no effect unless such appellant shall at the same time deliver to such magistrate an undertaking with one or more sureties to be approved by such magistrate, that if judgment be rendered against him upon such appeal, and execution thereupon be returned unsatisfied in whole or in part, they will pay the amount unsatisfied. Upon the giving of such notice and undertaking, all further proceedings upon such judgment shall be stayed until such appeal shall have been decided against the appellant, or dismissed for want of prosecution, as hereinafter provided.

§ 16. Whenever notice of appeal and an undertaking shall be given to any magistrate, as in the last section provided, it shall be the duty of such magistrate forthwith to send by the officer who shall have seized such liquor, or some other officer, the minutes taken by him upon the trial of such claim, together with the notice of appeal and undertaking, to such county judge, who shall thereupon by order, appoint a place and time, not less than ten nor more than twenty days thereafter, for hearing such appeal, and shall deliver such order to such officer. The officer shall, within five days thereafter, serve a copy of such order upon the claimant, and upon each one of the complainants, and make re-

turn thereof to such county judge. He shall also make oath before such magistrate of the delivery of such minutes, notice, and undertaking, to the county judge. If the claimant fails to appear at the time and place appointed for hearing such appeal, the same shall be dismissed, and the judgment appealed from shall be affirmed. If he appear, the appeal shall be heard upon the minutes delivered to the county judge, and shall be decided within twenty days thereafter. The county judge shall cause his decision, together with the minutes, notice and undertaking, to be forthwith filed in the office of the county clerk, and judgment shall be entered thereupon by such clerk. The complainant or complainants may appear, with or without counsel, on behalf of the people of this State, upon the trial of such claim, or the hearing of such appeal; but no proceedings shall be dismissed or judgment reversed because of his or their failure to appear. If the judgment appealed from be affirmed, the complainants, if they have appeared, shall recover costs, to be taxed by the county clerk. Upon the demand of any person having an interest in such judgment, the county clerk shall issue execution thereupon, in the same manner as upon judgments in civil actions. If such execution be returned unsatisfied, in whole or in part, any such person may maintain an action upon the undertaking given upon such appeal, and recover therein the amount of his interest in such judgment, with costs. The decision of the county judge shall be final.

§ 17. Whenever any liquor shall be adjudged forfeited, as provided in any section of this act, or whenever any claim shall have been decided adversely to the claimant, and the time for serving notice of appeal shall have elapsed, and no such notice and undertaking shall have been served, or whenever such notice shall have been served, and the judgment appealed from shall have been affirmed, and notice thereof given to the magistrate before whom such claim was tried, or forty-five days shall have elapsed since the delivery of such minutes, notice, and undertaking to the county judge, and proof thereof shall have been made, and no notice of the reversal of the judgment appealed from shall have been served upon such magistrate, it shall be the duty of

such magistrate forthwith to issue a warrant, commanding that the liquor so seized and forfeited, together with the vessels in which the same were contained, be destroyed, and the officer to whom the same shall be delivered shall forthwith proceed, in the presence of one of the complainants, or of some other person designated in such warrant, and to be summoned by him, to execute the same, and such person shall join with the officer in making the return, by affidavit, of the time, place, and manner of the execution of such warrant. The issuing of such warrant shall be stayed in case of a forfeiture adjudged upon the conviction of the owner, upon such owner giving notice, at the time of such conviction, of his intention to remove the same by certiorari into the supreme court, as provided by law, until the affirmance of such conviction by the supreme court, or until the time allowed by law for serving such certiorari upon the magistrate shall have elapsed, and no such writ shall have been served.

§ 18. No proceeding or judgment had or rendered under any provision of this act, shall be set aside or be void by reason of any technical errors or defects not affecting the merits, but the same may be amended without notice before or after judgment, or upon appeal, or review, or after judgment rendered upon appeal or review, when by such amendment substantial justice will be promoted.

§ 19. Whenever complaint on oath or affirmation shall be made before any magistrate, by any person that he has just cause to suspect, and does suspect and believe that any offence against any provision of this act has been committed, and that some other person or persons named by him, has or have knowledge of the commission of such offence, such magistrate shall forthwith issue a summons to the person or persons so named, commanding him or them to appear before him at a place and time not more than two days thereafter, to be designated in such summons, to testify in relation to such complaint. Such summons may be served in the same or an adjoining county, by any officer to whom the same shall be delivered, or by any other person, by stating the contents, or delivering a copy thereof, to the person or persons named therein, and at the same time showing him or them the original. If the

person or persons so summoned shall fail to appear, the magistrate, upon proof of the service of such summons, by the return of an officer, or the oath of any other person, shall issue an attachment to compel the attendance of such person or persons, for the purpose of giving such testimony. The person so attached may (unless some reasonable cause or excuse be shown by his own oath, or the oath of some other person) be punished by fine not exceeding ten dollars, and in default of payment he may be committed to the same extent as provided in the first section.

§ 20. It shall be the duty of every constable, marshal or policeman, whenever he shall see any person intoxicated in any public street or place, in violation of public decency, or disturbing the public peace and quiet, to apprehend such person, and keep him in some safe and convenient place, until he shall become sober, and thereupon forthwith to take him before some magistrate authorised to issue a warrant of arrest or search, as hereinbefore provided.

§ 21. Whenever any person shall appear or be brought before any magistrate as provided in the two preceding sections, it shall be the duty of such magistrate to administer to such person an oath or affirmation, and to examine him for the purpose of ascertaining whether any offence has been committed against any provision of this act. If such person shall refuse to be sworn or affirmed, or to answer any question pertinent to such examination, he shall be committed to the common jail, there to remain until he shall consent to be so sworn or affirmed, or to answer. If upon such examination it shall appear that any such offence has been committed within the jurisdiction of such magistrate, it shall be his duty to issue a warrant for the arrest of the offender, and the search of his premises as hereinbefore provided. If it shall appear that any such offence has been committed at any place beyond the jurisdiction of such magistrate, it shall be his duty to reduce such examination to writing, and forthwith to certify and send the same by any officer to any magistrate having jurisdiction of the offence charged, who shall thereupon proceed in relation to such complaint in the same manner as if the same had been made before him.

§ 22. Whenever any fine imposed under the first section of this act shall be collected, one half thereof shall be paid to the person or persons upon whose voluntary complaint the warrant was issued, or the first proceedings taken, and the other half to the overseers of the poor of the town in which the offence was committed, for the support of the poor; but no person shall be convicted upon the testimony of any one complainant unsupported by other evidence, unless such complainant shall before trial waive his right to receive such part of the fine, in which case the whole of such fine shall be paid to such overseers.

§ 23. Whenever a magistrate or jury, before whom any complaint for any offence or any claim shall be tried under any provision of this act shall be satisfied from the evidence and proceedings had before him or them, that the complaint was made without probable cause and with malicious intent to injure or harrass, such magistrate or jury may render a verdict against the complainant for costs, and if such complainant shall not forthwith, upon demand, pay such costs, he shall be committed to the common jail of the county, until the same be paid, not exceeding one day for each dollar of the amount thereof.

§ 24. No person who shall have been convicted of any offence against any provision of this act, or who shall be engaged in the sale or keeping of intoxicating liquor contrary to the provisions of this act, shall be competent to act as juror upon the trial of any offence, or claim, or action under any provision of this act, and when information shall be communicated to the court that any person summoned as a juror upon any such trial has been so convicted, or is engaged in such unlawful sale or keeping, or is believed to have been so convicted or to be so engaged, it shall be the duty of the court to examine such person upon oath in relation thereto, and no answer that he may make shall be used against him in any action civil or criminal, which may be commenced against him under any provision of this act, except upon the trial of an indictment for perjury; but he may decline to answer, in which case he shall be discharged by the court from all further attendance as a jurymen on such trial.

§ 25. No action shall be maintained to recover the value or possession of any intoxicating liquor sold, taken, detained or injured, unless the plaintiff shall prove that such liquor was sold

according to the provisions of this act, or was kept and owned by him for lawful purposes.

§ 26. Any person may maintain an action to recover any money paid, or the value of any services or labor rendered or done, or the value or possession of any property assigned and conveyed, in payment for liquor sold contrary to the provisions of this act, by the husband, wife, parent, child, ward, apprentice or servant of the plaintiff, and in every such action the person by whom such money was paid, services or labor rendered or done, or property assigned or conveyed, shall be a witness to any matter pertinent to such action, notwithstanding he or she may be the husband or wife of the plaintiff. Any married woman may commence and maintain any such action in her own name, with or without the consent of her husband.

§ 27. All securities and evidences of debt of whatsoever kind, given in whole or in part for or on account of liquor sold contrary to the provisions of this act, shall be utterly void as between all parties having notice thereof, either directly or indirectly, and upon the trial of any action instituted upon any such security or evidence of debt, the plaintiff may be called to prove such notice and shall not be considered a witness in chief, unless the party calling him shall make him such by examining him as to other matters.

§ 28. Every person who shall sell any liquor in violation of any provision of this act, or who shall furnish any liquor to be used as a beverage, shall be liable for all damages which may happen or result therefrom.

§ 29. Any person may maintain an action against any other person who shall sell any liquor contrary to any provision of this act, to the husband, wife, parent, child, guardian, ward, apprentice or servant of the plaintiff, or who shall intoxicate or cause such person or persons to be intoxicated, and it shall not be necessary in any such action to aver or prove any special damage, but the court or jury before which such action is tried, shall assess the damages of the plaintiff therein; but any special damage may be shown. Any married woman may maintain any such action in her own name with or without the consent of her husband. Upon the trial of any such action, the person to

whom such liquor was sold may be a witness, notwithstanding he or she may be the husband or wife of the plaintiff.

All damages recovered by any minor in any action commenced under this section or under the twenty-sixth or twenty-eight section, shall be the property of such minor, and shall be applied towards his support and education, or be invested for his benefit by the guardian of such minor appointed to prosecute such action.

§ 30. In all cases in which the right to commence any civil action is given by this act, the same may be commenced and maintained in any court of a justice of the peace, or in any inferior or court court of record having any original civil jurisdiction, or in any county court (except that no action to recover possession of personal property shall be brought in any court of a justice of the peace, or in any inferior court not of record), and shall be subject to the same rules of law and evidence as other civil actions, except as herein otherwise provided. In every such action commenced in any court of record, if the recovery of the plaintiff shall not exceed fifty dollars, he shall not recover more costs than damages. Execution may be issued against both person and property upon any judgment rendered in any such action.

§ 31. Upon the trial of any complaint or civil action, commenced under any provision of this act, proof of the sale or keeping of liquor shall be sufficient to sustain an averment of an unlawful sale or keeping. Whenever an unlawful sale is alleged and a delivery proved, it shall not be necessary to prove a payment, but such delivery shall be sufficient evidence of sale. No evidence shall be received in justification of such sale under the third section, unless the defendant in his plea or answer, shall have avowed such sale under said section, and shall have accompanied such plea or answer with an affidavit or affirmation that at the time of such sale he verily believed that the liquor sold was intended by the purchaser to be actually used in some other way than as a beverage, and not to be sold, disposed of, or given away, or used on the premises, or that such purchaser was duly authorized to sell liquor as provided by the second section of this act, as the case may be, and also setting forth the circumstances of such sale and the reasons upon which such belief was founded.

§ 32. No person or corporation shall knowingly carry or transport any liquor from place to place within this state, or from any place without this state to any place within this state, and no person shall knowingly deliver any liquor to any other person or to any corporation for the purpose of being so carried or transported, unless the name and place of business or residence of the person to whom the same is to be conveyed, together with the words "intoxicating liquor," are distinctly marked on the outside package in which the same is contained. But this section shall not apply to the carriage of liquor in quantities of five gallons or less to any place within the county in which the same was sold, or in an adjoining county. Any person or corporation offending against any provision of this section shall be liable to a penalty of fifty dollars, to be sued for and recovered by and in the name of any person who shall first commence an action therefor.

§ 33. In any county in which there now is, or hereafter may be a penitentiary, the court before which any conviction is had for an offence against any provision of this act, may, in its discretion, sentence and commit the person convicted, to such penitentiary at hard labor, instead of the common jail of such county.

§ 34. Every public officer who shall neglect or refuse to perform any duty required of him by any section of this act, shall, upon conviction thereof, be adjudged guilty of a misdemeanor, and shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding one year, or by both fine and imprisonment. Such conviction shall work a forfeiture of office in all cases except those of judicial officers.

§ 35. Every person who shall wilfully and corruptly swear or affirm falsely to any material matter upon any oath or affirmation taken or administered under any provision of this act, shall, upon conviction thereof, be adjudged guilty of perjury.

§ 36. The existing provisions of law relative to misdemeanors and offences shall apply to offences created by this act, except when the same are inconsistent with the provisions of this act.

§ 37. In addition to the fees now provided by law, there shall be allowed and included in every judgment for costs for the following services rendered under the provisions of this act, the following fees, which shall be audited and paid in the same manner as fees in other criminal cases, and whenever judgment shall

be rendered for costs, there shall be included therein fees for such prospective services as shall be necessary to enforce such judgments.

To any magistrate performing the following services:

For every warrant or summons of any kind, twenty-five cents.

For the trial of any claim, one dollar.

For a certificate of conviction, twenty-five cents.

For taking and certifying complaint to another magistrate, fifty cents.

To any sheriff, or other officer, performing the following services:

For serving an order of county judge, or summons for witness, for each person served, twenty-five cents.

For executing any warrant of search, or making any search, without process, one dollar.

For conveying liquor seized to place of storage, fifty cents, besides expense of labor, cartage and storage.

For executing warrant for destruction of forfeited liquor, besides actual expenses, one dollar.

For conveying certified complaint to any magistrate, or notice of appeal, undertaking and minutes to county judge, fifty cents.

For every mile traveled more than one in performing any of the above services, six cents.

To the complainant or other person summoned to witness the destruction of forfeited liquor, for witnessing such destruction and joining with the officer in making proof thereof, one dollar.

To any supervisor or superintendent of the poor, or overseer of the poor, two dollars for each day in which he is actually engaged in attending to any complaint or prosecution.

Upon judgment of affirmance, upon any appeal by any claimant of liquors seized under this act, the costs of the complainants shall be the same as upon appeals from judgments in civil actions rendered by justices of the peace.

§ 38. The term "intoxicating liquor" and "liquor" when used in this act, shall be construed to extend to, and include all alcoholic, vinous, malt and fermented liquors, and all mixed liquors, part of which is alcoholic, vinous, malt or fermented.

§ 39. It shall be the duty of the presiding judge of every court of oyer and terminer, and of every court of sessions specially to charge every grand jury to enquire into all violation of or offences under this act.

§ 40. No licenses to sell liquor shall hereafter be granted.

§ 41. All acts, and parts of acts, inconsistent with this act are hereby repealed.

§ 42. This act shall take effect on the fourth day of July next, except section forty-one, which shall take effect immediately.

NATIONAL LIBRARY OF MEDICINE



NLM 03288529 0